

ASSEMBLY BILL

No. 858

Introduced by Assembly Member Gilmore

February 26, 2009

An act to amend Sections 11378 and 11379 of the Health and Safety Code, and to add Section 1203.077 to the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 858, as introduced, Gilmore. Controlled substances: sentencing.

Existing law subjects a person who possesses for sale certain specified controlled substances, including methamphetamine and its salts and isomers, to imprisonment in the state prison for 16 months, 2 years, or 3 years, as specified.

This bill would, instead, subject any person who possesses for sale methamphetamine or its salts and isomers to imprisonment in the state prison for 2, 3, or 4 years.

Existing law subjects a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport certain specified controlled substances, including methamphetamine and its salts and isomers, to imprisonment in the state prison for 2, 3, or 4 years, as specified.

This bill would, instead, subject any person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport methamphetamine or its salts and isomers, to imprisonment in the state prison for 3, 4, or 5 years.

Under existing law, persons convicted of certain offenses may be granted probation.

This bill would provide that any person convicted of selling methamphetamine who is granted probation shall be confined in a county jail for at least 120 days as a condition of probation. That minimum sentence would be required to be imposed in every case unless the court finds that it is in the interest of justice not to impose that sentence, and states on the record the circumstances indicating why justice would be served by not imposing that minimum jail sentence.

Because this bill would increase the punishment for an existing crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11378 of the Health and Safety Code is
2 amended to read:
3 11378. Except as otherwise provided in Article 7 (commencing
4 with Section 4211) of Chapter 9 of Division 2 of the Business and
5 Professions Code, every person who possesses for sale any
6 controlled substance which is (1) classified in Schedule III, IV, or
7 V and which is not a narcotic drug, except subdivision (g) of
8 Section 11056, (2) specified in subdivision (d) of Section 11054,
9 except paragraphs (13), (14), (15), (20), (21), (22), and (23) of
10 subdivision (d), (3) specified in paragraph (11) of subdivision (c)
11 of Section 11056, (4) specified in paragraph (2) or (3) of
12 subdivision (f) of Section 11054, or (5) specified in subdivision
13 (d), (e), or (f), except paragraph (3) of subdivision (e) and
14 subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of
15 Section 11055, shall be punished by imprisonment in the state
16 prison, *provided, however, that every person who possesses for*
17 *sale any controlled substance that is specified in paragraph (2) of*
18 *subdivision (d) of Section 11055 shall be punished by imprisonment*
19 *in the state prison for two, three, or four years.*

1 SEC. 2. Section 11379 of the Health and Safety Code is
2 amended to read:

3 11379. (a) Except as otherwise provided in subdivision (b)
4 and in Article 7 (commencing with Section 4211) of Chapter 9 of
5 Division 2 of the Business and Professions Code, every person
6 who transports, imports into this state, sells, furnishes, administers,
7 or gives away, or offers to transport, import into this state, sell,
8 furnish, administer, or give away, or attempts to import into this
9 state or transport any controlled substance which is (1) classified
10 in Schedule III, IV, or V and which is not a narcotic drug, except
11 subdivision (g) of Section 11056, (2) specified in subdivision (d)
12 of Section 11054, except paragraphs (13), (14), (15), (20), (21),
13 (22), and (23) of subdivision (d), (3) specified in paragraph (11)
14 of subdivision (c) of Section 11056, (4) specified in paragraph (2)
15 or (3) of subdivision (f) of Section 11054, or (5) specified in
16 subdivision (d) or (e), except paragraph (3) of subdivision (e), or
17 specified in subparagraph (A) of paragraph (1) of subdivision (f),
18 of Section 11055, unless upon the prescription of a physician,
19 dentist, podiatrist, or veterinarian, licensed to practice in this state,
20 shall be punished by imprisonment in the state prison for a period
21 of two, three, or four years, *provided, however, that every person*
22 *who transports, imports into this state, sells, furnishes, administers,*
23 *or gives away, or offers to transport, import into this state, sell,*
24 *furnish, administer, or give away, or attempts to import into this*
25 *state or transport any controlled substance that is specified in*
26 *paragraph (2) of subdivision (d) of Section 11055 shall be punished*
27 *by imprisonment in the state prison for three, four, or five years.*

28 (b) Notwithstanding the penalty provisions of subdivision (a),
29 any person who transports for sale any controlled substances
30 specified in subdivision (a) within this state from one county to
31 another noncontiguous county shall be punished by imprisonment
32 in the state prison for three, six, or nine years.

33 SEC. 3. Section 1203.077 is added to the Penal Code, to read:

34 1203.077. Any person convicted of violating Section 11379
35 of the Health and Safety Code, relating to the sale of
36 methamphetamine, who is eligible for and granted probation, shall
37 be confined in a county jail for at least 120 days as a condition of
38 probation. That minimum sentence shall be imposed in every case
39 unless the court finds that it is in the interest of justice not to
40 impose that sentence, and states on the record the circumstances

1 indicating why justice would be served by not imposing that
2 minimum jail sentence.

3 SEC. 4. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.